

NEWPORT TRIAL GROUP  
A Professional Corporation  
Scott J. Ferrell, Bar No. 202091  
sferrell@trialnewport.com  
Richard H. Hikida, Bar No. 196149  
rhikida@trialnewport.com  
David W. Reid, Bar No. 267382  
dreid@trialnewport.com  
Victoria C. Knowles, Bar No. 277231  
vknowles@trialnewport.com  
4100 Newport Place, Ste. 800  
Newport Beach, CA 92660  
Tel: (949) 706-6464  
Fax: (949) 706-6469

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

KRISTYNE HANBERG, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

TRESTA, INC., doing business as  
PATLIVE.COM, a Florida corporation;  
and DOES 1 – 10, inclusive,

Defendants.

Case No. \_8:16-cv-00613

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA'S  
AUTOMATIC RENEWAL LAW  
(BUSINESS AND PROFESSIONS  
CODE §§ 17600-17604); and
2. VIOLATIONS OF CALIFORNIA'S  
UNFAIR COMPETITION LAW  
(BUSINESS AND PROFESSIONS  
CODE §§ 17200-17204).

1 Plaintiff Kristyne Hanberg (“Plaintiff”), on behalf of herself and all others  
2 similarly situated, complains and alleges as follows:

### 3 INTRODUCTION & OVERVIEW OF CLAIMS

4 1. Plaintiff brings this class action on behalf of herself and a class of others  
5 similarly situated consisting of all persons in the United States who, within the  
6 applicable statute of limitations period, purchased subscriptions for any products and/or  
7 services (such as the 24/7 Live Answer Service Plans) from Tresta, Inc., doing business  
8 as PATLive.com (“Tresta” or “Defendant”). The class of others similarly situated to  
9 Plaintiff is referred to herein as “Class Members.” The claims for damages, restitution,  
10 injunctive and/or other equitable relief, and reasonable attorneys’ fees and costs arise  
11 under California Business and Professions Code (hereinafter “Cal. Bus. & Prof. Code”) §§  
12 17602, 17603, and 17604) and 17200, *et seq.*, and California Code of Civil  
13 Procedure § 1021.5. Plaintiff and Class Members are consumers for purposes of Cal.  
14 Bus. & Prof. Code §§ 17600-17606.

15 2. During the Class Period, Defendant made automatic renewal or continuous  
16 service offers to consumers in and throughout the United States and (a) at the time of  
17 making the automatic renewal or continuous service offers, failed to present the  
18 automatic renewal offer terms or continuous service offer terms, in a clear and  
19 conspicuous manner and in visual proximity to the request for consent to the offer  
20 before the subscription or purchasing agreement was fulfilled in violation of Cal. Bus.  
21 & Prof. Code § 17602(a)(1); (b) charged Plaintiff’s and Class Members’ credit or debit  
22 cards, or third-party account (hereinafter “Payment Method”) without first obtaining  
23 Plaintiff’s and Class Members’ affirmative consent to the agreement containing the  
24 automatic renewal offer terms or continuous service offer terms in violation of Cal.  
25 Bus. & Prof. Code § 17602(a)(2); and (c) failed to provide an acknowledgment that  
26 includes the automatic renewal or continuous service offer terms, cancellation policy,  
27 and information regarding how to cancel in a manner that is capable of being retained  
28 by the consumer in violation of Cal. Bus. & Prof. Code § 17602(a)(3). As a result, all

1 goods, wares, merchandise, or products sent to Plaintiff and Class Members under the  
2 automatic renewal of continuous service agreements are deemed to be an unconditional  
3 gift pursuant to Cal. Bus. & Prof. Code § 17603.

4 3. As a result of the above, Plaintiff, on behalf of herself and Class Members,  
5 seeks damages, restitution, declaratory relief, injunctive relief and reasonable attorneys'  
6 fees and costs pursuant to Cal. Bus. & Prof. Code, §§ 17603, 17203, and 17204, and  
7 Code of Civil Procedure § 1021.5.

#### 8 **JURISDICTION AND VENUE**

9 4. This Court has diversity jurisdiction over this class action pursuant to 28  
10 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the  
11 amount in controversy exceeds five million dollars (\$5,000,000.00), exclusive of  
12 interest and costs, and is a class action in which some members of the class are citizens  
13 of different states than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

14 5. This Court also has personal jurisdiction over Defendant because  
15 Defendant currently does business in this state.

16 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because  
17 Defendant is subject to personal jurisdiction in this District and a substantial portion of  
18 the conduct complained of herein occurred in this District.

#### 19 **PARTIES**

20 7. Plaintiff purchased a subscription plan from Defendant in California  
21 during the Class Period. Plaintiff and Class Members are consumers as defined under  
22 Cal. Bus. & Prof. Code § 17601(d).

23 8. Defendant Tresta, Inc., doing business as PATLive.com, is a Florida  
24 corporation with its principal place of business located at 2639 N. Monroe Street,  
25 Cedars Building B, Suite 200, Tallahassee, FL 32303. Defendant operates throughout  
26 the United States and has done business throughout the United States at all times during  
27 the Class Period. Also during the Class Period, Defendant made, and continues to  
28 make, automatic renewal or continuous service offers to consumers in the United

1 States. Defendant operates a website which markets subscriptions for products and/or  
2 services, including live answering services.

3 9. The true names and capacities of the Defendants sued herein as DOES 1  
4 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such  
5 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is  
6 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of  
7 Court to amend this Complaint to reflect the true names and capacities of the DOE  
8 Defendants when such identities become known.

9 10. At all relevant times, each and every Defendant was acting as an agent  
10 and/or employee of each of the other Defendants and was acting within the course  
11 and/or scope of said agency and/or employment with the full knowledge and consent of  
12 each of the Defendants. Each of the acts and/or omissions complained of herein were  
13 alleged and made known to, and ratified by, each of the other Defendants (Tresta, Inc.,  
14 doing business as PATLive.com, and DOE Defendants will hereafter collectively be  
15 referred to as “Defendant”).

## 16 **FACTUAL BACKGROUND**

### 17 **California Business Professions Code §§ 17600-17606**

18 11. On December 1, 2010, sections 17600-17606 of the Cal. Bus. & Prof.  
19 Code came into effect. The Legislature’s stated intent for this Article was to end the  
20 practice of ongoing charges to consumers’ Payment Methods without consumers’  
21 explicit consent for ongoing shipments of a product or ongoing deliveries of service.  
22 See Cal. Bus. & Prof. Code § 17600.

23 12. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business  
24 making an automatic renewal or continuous service offer to a consumer in this state to  
25 do any of the following:

- 26 i) Fail to present the automatic renewal offer terms or  
27 continuous service offer terms in a clear and conspicuous  
28 manner before the subscription or purchasing agreement is  
fulfilled and in visual proximity, or in the case of an offer

conveyed by voice, in temporal proximity, to the request for consent to the offer.

- ii) Charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.
- iii) Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

13. Cal. Bus. & Prof. Code § 17601(a) defines the term “Automatic renewal” as a “plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.”

14. Cal. Bus. & Prof. Code § 17601(b) defines the term “Automatic renewal offer terms” as “the following clear and conspicuous disclosures: (1) That the subscription or purchasing agreement will continue until the consumer cancels. (2) The description of the cancellation policy that applies to the offer. (3) The recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known. (4) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer. (5) The minimum purchase obligation, if any.”

15. Pursuant to Cal. Bus. & Prof. Code § 17601(c), “clear and conspicuous” or “clearly and conspicuously” means “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbol ls or other marks, in a manner that clearly calls attention to the language.”

1           16. Section 17602(b) provides: “A business making automatic renewal or  
2 continuous service offers shall provide a toll-free telephone number, electronic mail  
3 address, a postal address only when the seller directly bills the consumer, or another  
4 cost-effective, timely, and easy-to-use mechanism for cancellation that shall be  
5 described in the acknowledgment specified in paragraph (3) of subdivision (a).”

6           17. Section 17603 of Cal. Bus. & Prof. Code provides: “In any case in which a  
7 business sends any goods, wares, merchandise, or products to a consumer, under a  
8 continuous service agreement or automatic renewal of a purchase, without first  
9 obtaining the consumer’s affirmative consent as described in Section 17602, the goods,  
10 wares, merchandise, or products shall for all purposes be deemed an unconditional gift  
11 to the consumer, who may use or dispose of the same in any manner he or she sees fit  
12 without any obligation whatsoever on the consumer’s part to the business, including,  
13 but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,  
14 merchandise, or products to the business.”

15 **Defendant’s Business**

16           18. Defendant provides telephone answering services of varying prices  
17 depending on the customer’s amount of minutes needed per month. Defendant’s  
18 product and services plan constitutes an automatic renewal and/or continuous service  
19 plan or arrangement for the purposes of Cal. Bus. & Prof. Code § 17601.

20 **Defendant’s Terms of Use**

21           19. During the Class Period, Defendant’s webpage, found at  
22 www.PATLive.com, contained a document entitled “Terms & Conditions.” This is a  
23 lengthy document that sets forth information concerning the recurring nature of  
24 Defendant’s subscription programs and the manner in which the subscriptions may be  
25 modified or cancelled; however, these terms are not set forth where a prospective  
26 subscriber finalizes a purchase. Indeed, that page does not note that the subscription  
27 will be renewed automatically until canceled.

28 ///

**Defendant's Terms of Use Fail to Provide Clear and Conspicuous Disclosures As Required by Law.**

20. Within the Terms & Conditions, Defendant failed to state in clear and conspicuous language (*i.e.*, in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols of other marks, in a manner that clearly calls attention to the language) that:

- i) The subscription or purchasing agreement will continue until the consumer cancels;
- ii) Describes the cancellation policy that applies to the offer;
- iii) Recurring charges that will be charged to the consumer's Payment Method account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known; and
- iv) The length of the automatic renewal term or that the service is continuous unless the length of tile term is chosen by the consumer.

**Defendant Failed to Present the Automatic Renewal Offer Terms or Continuous Service Offer Terms in a Clear and Conspicuous Manner Before the Subscription or Purchasing Agreement was Fulfilled and in Visual Proximity to the Request for Consent to the Offer in Violation of Cal. Bus. & Prof. Code § 17602(a)(1).**

21. During the Class Period, Defendant made, and continues to make, an automatic renewal offer for its subscriptions plans to Consumers throughout the United States, including Plaintiff and Class Members. On the page of Defendant's website where the potential subscriber ultimately is invited to "Create an Account", the automatic renewal offer terms or continuous service offer terms as defined by Cal. Bus. & Prof. Code § 17601(b) are not included.



**PATLive**  
(800) 775-7790

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Other

**Payment Information**

**!** Attention Free Trial Users: We will not charge your card until day 15, and if you cancel before then you will be billed nothing. However, a credit card is required to start your free trial.

Name on Card Card Number

Expiration Date CVV Code

11 15

**Billing Information**

Country Address: Apt or Suite:

United States

City: State: Zip:

Alaska

**Terms & Conditions**

☐ I agree to PATLive's Terms & Conditions

You must agree to continue

Plan

Starter Plan \$85/mo

Phone Number

(415) 662-0010 Included

Monthly Charges

Services: \$85  
Taxes & Fees: \$3  
**Total: \$88**

**Create Account**

One or more fields was empty or invalid

No Contract

Highly Trained Professional Agents

22. As a result, prior to charging Plaintiff and Class Members, Defendant failed, and continues to fail, to obtain Plaintiff's and Class Members' affirmative consent to any language containing any automatic renewal offer terms or continuous service offer terms as defined by Cal. Bus. & Prof. Code § 17601(b).

23. Because of Defendant's failure to gather affirmative consent to the automatic renewal terms, all services provided to Plaintiff and Class Members under the automatic renewal or continuous service agreement are deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603, and Plaintiff and Class Members may use or dispose of the same in any manner they see fit without any



1 obligation whatsoever on their part to Defendant, including, but not limited to, bearing  
2 the cost of, or responsibility for, Defendant's services and products.

3 **Defendant Failed to Provide an Acknowledgment as Required by Cal. Bus. &**  
4 **Prof. Code §§ 17602(a)(3) and 17602(b)**

5 24. Furthermore, and in addition to the above, after Plaintiff and Class  
6 Members subscribed to one of Defendant's subscription plans, Defendant sent to  
7 Plaintiff and Class Members documents entitled "PATLive Service Receipt", but has  
8 failed, and continues to fail, to provide an acknowledgment that includes the automatic  
9 renewal or continuous service offer terms, cancellation policy, and information on how  
10 to cancel in a manner that is capable of being retained by Plaintiff and Class Members  
11 in violation of Cal. Bus. & Prof. Code § 17602(a)(3). Moreover, Defendant failed to  
12 provide Plaintiff and Class Members with an acknowledgment regarding how to  
13 cancel the subscription and allow Plaintiff and Class Members to cancel before  
14 payment, as required by Cal. Bus. & Prof. Code § 17602(b).

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✓ **Your account is created!**

Your account is setup, but before you can begin using your service, we need to know how you'd like your calls answered. Customer Service agents are available 24/7 to assist you with this at 800-775-7790 and in most cases can complete your script consultation in under fifteen minutes.

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## CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure. The proposed Class (the “Class”) that Plaintiff seeks to represent is composed of and defined as:

**“All persons within the United States that, within the applicable statute of limitations period, purchased any product or service in response to an offer constituting an “Automatic Renewal” as defined by § 17601(a) from Tresta, Inc., doing business as PATLive.com, Inc., its predecessors, or its affiliates.”**

26. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

27. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of

1 Class members are unknown to Plaintiff at this time and can only be ascertained  
2 through appropriate discovery, Plaintiff is informed and believes the Class includes  
3 hundreds of thousands of members. Plaintiff alleges that the Class may be ascertained  
4 by the records maintained by Defendant.

5 28. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all  
6 members of the Class which predominate over any questions affecting only individual  
7 members of the Class. These common legal and factual questions, which do not vary  
8 from class member to class member, and which may be determined without reference to  
9 the individual circumstances of any class member, include, but are not limited to, the  
10 following:

- 11 i) (a) Whether Defendant failed to present the automatic renewal offer  
12 terms, or continuous service offer terms, in a clear and conspicuous  
13 manner before the subscription or purchasing agreement was  
14 fulfilled and in visual proximity to the request for consent to the  
15 offer in violation of Cal. Bus. & Prof. Code § 17602(a)(1);
- 16 ii) Whether Defendant failed to provide an acknowledgment that  
17 describes a cost-effective, timely, and easy-to-use mechanism for  
18 cancellation in violation of Cal. Bus. & Prof. Code § 17602(b);
- 19 iii) Whether Defendant charged Plaintiff's and Class Members'  
20 Payment Method for an automatic renewal or continuous service  
21 without first obtaining the Plaintiff's and Class Members'  
22 affirmative consent to the Terms of Use containing the automatic  
23 renewal offer terms or continuous service offer terms in violation of  
24 Cal. Bus. & Prof. Code § 17602(a)(2);
- 25 iv) Whether Defendant failed to provide an acknowledgement that  
26 included the automatic renewal or continuous service offer terms,  
27 cancellation policy, and information on how to cancel in a manner  
28

1 that is capable of being retained by Plaintiff and Class Members, in  
 2 violation of Cal. Bus. & Prof. Code § 17602(a)(3);

3 v) Whether Defendant's Terms of Use contained the automatic renewal  
 4 offer terms and/or continuous service offer terms as defined by Cal.  
 5 Bus. & Prof. Code § 1760l;

6 vi) Whether Plaintiff and the Class Members are entitled to restitution  
 7 of money paid in circumstances where the goods and services  
 8 provided by Defendant are deemed an unconditional gift in  
 9 accordance with Cal. Bus. & Prof. Code § 17603;

10 vii) Whether Plaintiff and Class Members are entitled to restitution in  
 11 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;

12 viii) Whether Plaintiff and Class Members are entitled to attorneys' fees  
 13 and costs under California Code of Civil Procedure § 1021.5; and

14 ix) The proper formula(s) for calculating the restitution owed to Class  
 15 Members.

16 29. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the  
 17 members of the Class. Plaintiff and all members of the Class have sustained injury and  
 18 are facing irreparable harm arising out of Defendant's common course of conduct as  
 19 complained of herein. The losses of each member of the Class were caused directly by  
 20 Defendant's wrongful conduct as alleged herein.

21 30. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the  
 22 interests of the members of the Class. Plaintiff has retained attorneys experienced in the  
 23 prosecution of class actions, including complex consumer and mass tort litigation.

24 31. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available  
 25 methods of fair and efficient adjudication of this controversy, since individual litigation  
 26 of the claims of all Class members is impracticable. Even if every Class member could  
 27 afford individual litigation, the court system could not. It would be unduly burdensome  
 28 to the courts in which individual litigation of numerous issues would proceed.

Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

32. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice, which Defendant must provide to all Class members.

33. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

34. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects generally applicable to the Class, thereby making appropriate final injunctive relief with regard to the members of the Class as a whole.

### **FIRST CAUSE OF ACTION**

#### **FAILURE TO PRESENT AUTOMATIC RENEWAL OFFER TERMS OR CONTINUOUS SERVICE OFFER TERMS CLEARLY AND CONSPICUOUSLY AND IN VISUAL, PROXIMITY TO THE REQUEST FOR CONSENT OFFER (CAL. BUS. & PROF. CODE§ 17602(a)(l))**

**(By Plaintiff, on her own behalf and on behalf of the Class, against All Defendants)**

35. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

36. Cal. Bus. Prof. Code§ 17602(a)(1) provides:

(a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.

37. Defendant failed to present the automatic renewal offer terms, or continuous service offer terms, in a clear and conspicuous manner and in visual proximity the request for consent to the offer before the subscription or purchasing agreement was fulfilled.

38. As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(1), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all civil remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7 of the Cal. Bus. & Prof. Code.

39. Plaintiff, on behalf of herself and Class Members, requests relief as described below.

## **SECOND CAUSE OF ACTION**

### **FAILURE TO OBTAIN CONSUMER'S AFFIRMATIVE CONSENT**

#### **BEFORE THE SUBSCRIPTION IS FULFILLED**

#### **(CAL BUS. & PROF. CODE §§ 17602(a)(2) and 17603)**

**(By Plaintiff, on her own behalf and on behalf of the Class, against All Defendants)**

40. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

41. Cal. Bus. & Prof. Code § 17602(a)(2) provides:

(a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(2) Charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

42. Defendant charged, and continues to charge Plaintiff's and Class Members' Payment Method for an automatic renewal or continuous service without first obtaining Plaintiff's and Class Members affirmative consent to the Terms of Use purportedly containing the automatic renewal offer terms or continuous service offer terms.

43. As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(2), Defendant is liable to provide restitution to Plaintiff and Class Members under Cal. Bus. & Prof. Code § 17603.

44. Plaintiff, on behalf of herself and Class Members, requests relief as described below.

**THIRD CAUSE OF ACTION**  
**FAILURE TO PROVIDE ACKNOWLEDGMENT**  
**WITH AUTOMATIC RENEWAL TERMS AND**  
**INFORMATION REGARDING CANCELLATION POLICY**  
**(CAL. BUS. & PROF. CODE §§ 17602(a)(3), 17602(b))**

**(By Plaintiff, on her own behalf and on behalf of the Class, against All Defendants)**

45. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

46. Cal. Bus. & Prof. Code § 17602(a)(3) provides:

(a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(3) Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If



the offer includes a free trial, the business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

Cal. Bus. & Prof. Code § 17602(b) provides:

“A business making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a postal address only when the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in paragraph (3) of subdivision (a).”

47. Defendant failed to provide an acknowledgement that includes the automatic renewal or continuous service offer terms, cancellation policy, and information on how to cancel in a manner that is capable of being retained by Plaintiff and Class Members.

48. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b), Defendant is subject to all civil remedies under Cal. Bus. & Prof. Code § 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of Division 7 of the Cal. Bus. & Prof. Code.

49. Plaintiff, on behalf of herself and Class Members, requests relief as described below.

#### **FOURTH CAUSE OF ACTION**

#### **VIOLATION OF THE UNFAIR COMPETITION LAW**

**(CAL. BUS. & PROF. CODE§ 17200 *et. seq.*)**

**(By Plaintiff, on her own behalf and on behalf of the Class, against All Defendants)**

50. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

51. Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”) prohibits unfair competition in the form of any unlawful or unfair business act or practice. Cal. Bus. & Prof. Code § 17204 allows “a person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may

1 bring such an action on behalf of himself or herself and others similarly situated who  
2 are affected by the unlawful and/or unfair business practice or act.

3 52. Since December 1, 2010, and continuing to the present, Defendant has  
4 committed unlawful and/or unfair business acts or practices as defined by the UCL, by  
5 violating Cal. Bus. & Prof. Code §§ 17602(a)(1), 17602(a)(2), 17602(a)(3), and  
6 17602(b). The public policy which is a predicate to a UCL action under the unfair  
7 prong of the UCL is tethered to a specific statutory provision. *See* Cal. Bus. & Prof.  
8 Code §§ 17600, 17602.

9 53. As a direct and proximate result of Defendant's unlawful, and/or unfair  
10 acts and practices described herein, Defendant has received, and continues to hold,  
11 unlawfully obtained property and money belonging to Plaintiff and Class Members in  
12 the form of payments made for subscription agreements by Plaintiff and Class  
13 Members. Defendant has profited from its unlawful and/or unfair acts and practices in  
14 the amount of those business expenses and interest accrued thereon.

15 54. Plaintiff and similarly-situated Class Members are entitled to restitution  
16 pursuant to Cal. Bus. & Prof. Code § 17203 for all monies paid by Class Members  
17 under the subscription agreements from December 1, 2010, to the date of such  
18 restitution at rates specified by law. Defendant should be required to disgorge all the  
19 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class  
20 Members, from whom they were unlawfully taken.

21 55. Plaintiff and similarly situated Class Members are entitled to enforce all  
22 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain  
23 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

24 56. Plaintiff has assumed the responsibility of enforcement of the laws and  
25 public policies specified herein by suing on behalf of herself and other similarly-  
26 situated Class Members. Plaintiff's success in this action will enforce important rights  
27 affecting the public interest. Plaintiff will incur a financial burden in pursuing this  
28

1 action in the public interest. An award of reasonable attorneys' fees to Plaintiff is thus  
2 appropriate pursuant to California Code of Civil Procedure § 1021.5.

3 57. Plaintiff, on behalf of herself and Class Members, request relief as  
4 described below.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff requests the following relief:

7 A. That the Court determine that this action may be maintained as a class  
8 action under Rule 23(a) of the Federal Rules of Civil Procedure, and define the Class as  
9 requested herein;

10 B. That the Court find and declare that Defendant has violated Cal. Bus. &  
11 Prof. Code § 17602(a)(1) by failing to present the automatic renewal offer terms, or  
12 continuous service offer terms, in a clear and conspicuous manner and the visual  
13 proximity to the request for consent to the offer before the subscription or purchasing  
14 agreement was fulfilled;

15 C. That the Court find and declare that Defendant has violated Cal. Bus. &  
16 Prof. Code § 17602(b) by failing to provide an acknowledgment that describes a toll-  
17 free telephone number, electronic mail address, a postal address only when the seller  
18 directly bills the consumer, or another cost-effective, timely, and easy-to-use  
19 mechanism for cancellation.

20 D. That the Court find and declare that Defendant has violated Cal. Bus. &  
21 Prof. Code § 17602(a)(2) by charging Plaintiff's and Class Members' Payment Method  
22 without first obtaining their affirmative consent to the Terms and Conditions containing  
23 the automatic renewal offer terms or continuous service terms;

24 E. That the Court find and declare that Defendant has violated Cal. Bus. &  
25 Prof. Code § 17602(a)(3) by failing to provide an acknowledgement that includes the  
26 automatic renewal or continuous service offer terms, cancellation policy and  
27 information on how to cancel in a manner that is capable of being retained by Plaintiff  
28 and Class Members;

1 F. That the Court find and declare that Defendant has violated the UCL and  
2 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §  
3 17602.

4 G. That the Court award to Plaintiff and Class Members damages and full  
5 restitution in the amount of the subscription payments made by them pursuant to Cal.  
6 Bus. & Prof. Code§ 17603, in an amount to be proved at trial;

7 H. That Defendant be ordered to pay restitution to Plaintiff and the Class due  
8 to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§ 17200-17205 in  
9 the amount of their subscription agreement payments;

10 I. That the Court find that Plaintiff and Class Members are entitled to  
11 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203;

12 J. That Plaintiff and the Class be awarded reasonable attorneys' fees and  
13 costs pursuant to California Code of Civil Procedure § 1021.5, and/or other applicable  
14 law; and

15 K. That the Court award such other and further relief as this Court may deem  
16 appropriate.

17  
18 Dated: April 1, 2016

NEWPORT TRIAL GROUP

19  
20 By: /s/Scott J. Ferrell

21 Scott J. Ferrell

22 Attorney for Plaintiff  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 1, 2016, I electronically filed the foregoing **CLASS ACTION COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/ Scott J. Ferrell  
Scott J. Ferrell